



QA#: 177565

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Washington, DC 20590

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The Steel Shipping Container Institute (SSCI), the North American trade associations of manufacturers of steel drums and pails, submits this application for exemption to 49 CFR §178.3(a)(5) which specifies that "the marking or a duplicate thereof" must be placed on the top or side of the container and to 49 CFR §178.503(a)(10) which states that the "marking on the top head or side must be the same as the information ... permanently marked ... on the bottom of the drum". This request for exemption is to replace 11830-N which has subsequently been withdrawn.

The SSCI requests that its members be allowed to mark the top or side of the container with a durable marking that is less than or equal to the permanent mark. The SSCI does not request to be exempt from applying a mark on the top or side. In addition, the container marked with a durable marking that is less than the permanent mark must meet all the prescribed tests required with the permanent mark. The exemption only applies to non-bulk containers of 12 liters (3 gallons) to 450 liters (119 gallons) manufactured by the U.S. members of SSCI whose gross mass exceeds 30 kgs (66 lbs). In addition, the marking of nominal thickness as required by §178.503(a)(9) and (a)(10) shall not be affected by this exemption.

In preparing this application, the SSCI solicited the input of the Association of Container Reconditions (ACR) whose letter of support is herewith attached. The SSCI also requests that this letter be considered a petition for rulemaking under §107.113. This exemption would expire at the time the final rule is effective.

The name and address of the applicant is:

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Some steel drum shippers will not accept a Packing Group I level drum if their product is a PG II or PG III, or will only accept a drum marked exactly to their specifications, although the packaging is capable of meeting the higher performance marking on the drum bottom head. To minimize inventory SSCI members have limited the number of marks for tighthead and open head drums by marking drums to the highest attainable drop height and hydrostatic pressure even though this exceeds what some customers require.

The alternatives are to maintain a ready supply of variously marked bottom heads (with different Packing Group, specific gravity, and hydrostatic pressure levels) or to reject the business. Special bottom heads need to be embossed with the lesser marking so that they are the same as the durable marking under §178.3. This is an extra investment in inventory, dies and labor that does not contribute to improved safety. In addition, with a permanent marking that indicates a lower performance level than the container is capable, subsequent users and reconditioners will be unaware that the container can meet a higher performance level and its use will be unnecessarily limited.

Section 178.503(c)(2) presently allows reconditioners to apply a durable marking that "may identify a different performance capability" than that tested. The SSCI requests its members be given the permission to durably mark drums to identify "a different performance capability" than tested.

SSCI suggests the following special provision in the exemption to allay any concerns that the partial permanent mark might be considered less of a certification than the full durable mark.

Regardless of any lower performance level durably marked on the top or side of the drum, the information in Section 178.503(a)(1) through (a)(6) and (a)(9) permanently marked on the bottom of the drum is the manufacturer's certification under Section 178.2(b) that the drum complies in all respects to the provisions of the regulations applicable to such a permanent mark.

It is clear in the CFR that the manufacturer's mark must be legitimate. Section 178.2(c)(1)(i) requires a manufacturer to notify a customer if any part of the requirement is not complied with. This includes a permanent

mark which exceeds that of the performance capability of the drum. In addition, 49 CFR §178.2(d) states that a packaging not conforming to the applicable specifications may not be marked to indicate such conformance. Also, Section 178.503(a)(10) requires a permanent marking for all steel drums over 100 liters and that "this marking indicates a drum's characteristics at the time it was manufactured...." Thus, to place a permanent mark on the drum which represents a performance capability greater than that tested of the design type would not only be illegal but unethical.

The drum must meet all the applicable performance tests in Subpart M and the applicable marking and construction requirements of Subpart L. Under no circumstances shall the durable marking on the top or side of the drum identify a greater performance capability than the tested permanent marking.

As long as the container meets the performance level marked as the permanent marking, then there is no increased risk to safety and this exemption would be consistent with the public interest and adequately protect against the risks to life and property inherent in the transportation of hazardous materials in commerce.

The SSCI requests the duration of the exemption to be the lesser of either two years or the time in which it takes for the HMR to be changed to reflect the nature of this exemption. If you have any questions, please contact me at (202) 408-1900.

Sincerely,



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